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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA AT ANCHORAGE**

ENOCH ADAMS, JR., LEROY ADAMS,  
ANDREW KOENIG, JERRY NORTON  
DAVID SWAN and JOSEPH SWAN.

## Plaintiffs,

V.

## TECK COMINCO ALASKA INCORPORATED

**Defendant.**

Case No. A04-49 (JWS)

**PLAINTIFFS' OBJECTION  
TO UNDISCLOSED  
EXHIBITS AND MOTION IN  
*LIMINE* TO EXCLUDE  
DOCUMENTS NOT  
TIMELY DISCLOSED  
(Fed. R. Civ. Proc. 26 and 37)**

NANA REGIONAL CORPORATION and  
NORTHWEST ARCTIC BOROUGH,

#### **Intervenors-Defendants.**

**ORDER GRANTING PLAINTIFFS' OBJECTIONS  
TO EXHIBITS AND MOTION IN LIMINE TO  
EXCLUDE DOCUMENTS**

1 Teck Cominco filed an Exhibit List [Docket 194] and lodged the exhibits with the Court.  
 2 Plaintiffs object, in part, because a number of the exhibits have not been previously disclosed in  
 3 this litigation, in violation of Rule 26 of the Federal Rules of Civil Procedure and this Court's  
 4 Pre-Trial Order of August 7, 2007 [Docket 167]. Pursuant to Federal Rules of Civil Procedure  
 5 Rule 37, and good cause appearing therefore, IT IS ORDERED that the following exhibits,  
 6 which were not timely disclosed, are excluded from trial and are not to be used for any purpose  
 7 in this case.

Lab Reports		
Exhibit No.	Description	Bates No.
1116	Final Report-Toxicity Evaluation of Outfall 001 to Ceriodaphnia by Parametrix dated August 2000	TC 051054-51090 RD
1218	Short-Term Chronic Toxicity of Effluents from Red Dog Mine to Pimephales promelas by ENSR dated July 2002	TC 051134-51373 RD
1230	Report of Short-Term Chronic Toxicity Testing using Ceriodaphnia by ENSR dated September 6, 2002	TC 051374-51444 RD
1231 <sup>1</sup>	Bioassay Report conducted August 7 through 14, 2002 by CH2MHill dated August 2002	TC 051733-51766 RD
1232 <sup>2</sup>	Bioassay Report conducted August 30 through September 3, 2002 by CH2MHill dated September 4, 2002	TC 051767-51798 RD
1264	Short-Term Chronic Toxicity of Effluents from Red Dog Mine to Ceriodaphnia by ENSR dated October 2002	TC 051858-52087 RD
1341	Report of Short-Term Chronic Toxicity Testing using Ceriodaphnia by ENSR dated August 2004	TC 051017-51053 RD
1635	Acute Toxicity of Effluent from Red Dog Mine, Port Outfall 001 & 005 to Mysid Shrimp by ENSR dated July/August 2001	TC 052088-52146 RD

26 <sup>1</sup> Exhibit labeled 2231.

27 <sup>2</sup> Exhibit labeled 2232.

<b>Lab Reports</b>		
1636	Acute Toxicity of Effluent from Red Dog Mine, Port Outfall 001 & 005 to Tops melt by ENSR dated July/August 2001	TC 052147-52208 RD
1637	Acute Toxicity of Effluent from Red Dog Mine, Port Outfall 001 & 005 to Mysid Shrimp by ENSR dated August 2001	TC 052209-52338 RD
1638	Acute Toxicity of Effluent from Red Dog Mine, Port Outfall 001 to Tops melt by ENSR dated September 2001	TC 052339-52399 RD

<b>Internal Memoranda and Procedures</b>		
1648	Discharge TDS SOP	NA
1649	Sodium Sulfide Dosage Changes SOP dated 2003	NA
1651	Sodium Sulfide System Process Description	NA
1652	In-stream Control of TDS at Red Dog Mine	NA

<b>Biomonitoring Studies</b>		
1656	2000 Aquatic Biomonitoring at Red Dog Mine dated May 15, 2001	NA
1658	2002 Aquatic Biomonitoring at Red Dog Mine dated 2003, Report No. 03-03	NA
1663	2006 Aquatic Biomonitoring at Red Dog Mine dated June 2007, Report No. 07-03	NA

<b>Photos</b>		
1671	Aerial View of Red Dog Creek pre-mining	NA
1672	Aerial View of Tailings pond	NA
1673	Aerial View of Outfall 001	NA
1674	Side View of Outfall 001	NA
1675	Area map of Red Dog Mine	NA
1676	Red Dog Mine Mixing Zones: Sta. 150, 9 & 10	NA

Photos		
1677	Red Dog Mine Mixing Zones: Sta. 151, 20, 12	NA
1678	Origin of the Opportunity photograph	NA
1679	Water Balance, Tailings pond diagram	NA
1680	Map of TDS Limits	NA
1681	Graph: Impoundment TDS 1999-2007	NA
1682	Chart: Discharge Performance by Month to Red Dog Creek	NA
1683	Pond Elevation Since 1998	NA
1684	Photograph of Red Dog Clean Water Bypass/Diversion System	NA
1685	Photographs of Middle Fork-Before and After	NA
1686	Red Dog Operations tailings impoundment photograph	NA
1687	Photograph of Sulfur Creek, pre-mining	NA
1688	Photograph of Alvinella Seep	NA
1689	Photograph of Red Dog Diversion	NA
1690	Photograph of Clean Water Bypass Upgrades	NA
1691	Photographs of Clean Water Bypass Upgrades 4	NA
1692	Diversion Ditch 4 Construction	NA
1693	Tailing Pond & Dam Locations Map	NA
1694	Back Dam Diagram	NA
1695	Photograph of Water Treatment Plants	NA
1696	Photograph of Fourth Sandfilter	NA
1697	Photograph of New Sandfilter Building	NA
1698	Photograph of Water Treatment Plant 3	NA
1699	Aerial photograph of Outfall 001	NA
1700	Water Management Diagram of tailings impoundment	NA
1701	Map: Streams and Sample Locations in the Immediate Vicinity of Red Dog Mine	NA

ORDER GRANTING PLAINTIFFS' OBJECTIONS  
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EXCLUDE DOCUMENTS

Photos		
1702	Map: Streams and Rivers Downstream of Red Dog Mine	NA
1703	Photograph of Middle fork Red Dog Creek at point where effluent enters creek dated July 1995	NA
1704	Map: Red Dog Creek identification of TDS zones	NA
1705	Map: Red Dog Creek identification of spawning areas	NA
1741	Oversize Map of Red Dog Mine Environmental Stations	NA
1742	Oversize Map of Red Dog Mine Environmental Stations including Station 1 and Chukchi Sea	NA
1743	Oversize Map of Kivalina Area Use	NA
1744	Oversize Map of Kivalina Community	NA

  

Charts		
1664	Chart: Sulfate & TDS at Station 1 & 2	NA
1665	Chart: Total Cyanide and WAD Cyanide at Station 2	NA
1666	Chart: Total Cyanide and Wad Cyanide at Station 2	NA
1667	Graph: Comparison of Returns - Actual Dow Jones v. Kavanaugh Assumptions July 1, 1999-January 11, 2008	NA
1668	Chart: Summary of Economic Benefit Results Using The correct Financial Methodology	NA
1669	Chart: Methodology that disregards the Distinction Between Ex-Post and Ex-Ante Information	NA
1670	Chart: Economic Benefit Methodology Based on the Distinction Between Ex-Post and Ex-Ante	NA
1707	Chart: Station 1 Average TDS 1991 to 2005	NA
1708	Chart: Station 1 Average TDS 1999 to 2005	NA
1709	Spreadsheet: TDS Data Station 10 for 2002 and 2003	NA
1710	Spreadsheet: Estimated TDS Concentration at Station 10 on July 7, 1999	NA
1711	Figure 104: Dolly Varden Kidney Tissue, Cadmium	NA

1 **IT IS SO ORDERED.**

2  
3 DATE:

4 \_\_\_\_\_  
5  
6  
7 **CERTIFICATE OF SERVICE**  
8 I hereby certify that on the 29th day of January 2008, a true and correct copy of the foregoing Proposed Order Granting  
9 Objections to Exhibit List and Motion to Exclude Undisclosed Documents was served, via electronic mail, on the below  
10 identified parties of record:  
11 Sean Halloran  
12 Hartig Rhodes  
13 717 K Street  
14 Anchorage, AK 99501  
15 Nancy S. Wainwright  
16 Law Offices of Nancy S. Wainwright  
17 13030 Back Road, Suite 555  
18 Anchorage, Alaska 99515-3538  
19 James E. Torgerson  
20 Heller Ehrman White & McAuliffe LLP  
21 510 L Street, Suite 500  
22 Anchorage, Alaska 99501-1959  
23 David S. Case  
24 Landye Bennett Blumstein LLP  
25 701 W. 8<sup>th</sup> Ave., Suite 1200  
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Portland, OR 97201  
29 \_\_\_\_\_  
30 /S/  
31 Luke Cole  
32  
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38 ORDER GRANTING PLAINTIFFS' OBJECTIONS  
39 TO EXHIBITS AND MOTION IN LIMINE TO  
40 EXCLUDE DOCUMENTS